1 H. JAMES MAGNUSON era courts Attorney at Law 2 1250 Northwood Center Ct, Ste A P.O. Box 2288 3 Coeur d'Alene, Idaho 83814 Telephone: (208) 666-1596 4 Fax: (208) 666-1700 5 Attorney for Trustee 6 7 UNITED STATES BANKRUPTCY COURT 8 DISTRICT OF IDAHO 9 In Re: Case No. -99-209 10 LAKE CITY R.V., INC., MEMORANDUM IN SUPPORT OF TRUSTEE'S OBJECTION TO GALE 11 12 13

COMES NOW Ford Elsaesser, Trustee of the above-referenced Debtor, and in support of his Objection to Claim No. 42, the Claim of John and Jacquelyn Gale sets forth the following:

16 <u>I. FACTS</u>

A judgment was entered in Adversary Case No. 97-6316 and 17 matter styled as Ford Elsaesser, Trustee vs. John Gale and 18 Jacquelyn Gale in the amount of \$105,435.16 on March 29, 1999. 19 The Trustee executed on the Gale's bank account and in early June 20 of 1999 received \$29,354.14 from the Bonner County Sheriff as a 21 result of said execution. On July 29, 1999 the Gales paid an 22. additional \$30,330.86 on the outstanding judgment. The Trustee 23 again executed on the Gale's bank account and obtained \$3,339.23 24 on approximately February 14, 2000. These are the only payments 25 that have been made to satisfy said judgment. 26

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## II. LEGAL ARGUMENT

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Bankruptcy Rule 3002(c)(3) states,

- (c) Time for Filing. In a chapter 7 liquidation, ..., a proof of claim is timely filed if it is filed not later than 90 days after the first date set for the meeting of creditors called under § 341(a) of the Code, except as follows:
- (3) An unsecured claim which arises in favor of an entity or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that entity or denies or avoids the entity's interest in property. If the judgment imposes a liability which is not satisfied, or duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.
- Bankruptcy Rule 3002(c)(3) requires an unsecured claim resulting from a judgment to be filed within 30 days after the judgment becomes final. In this case the Court's judgment was entered on March 29, 1999. No appeal was made and it therefore would be final after April 8, 1999. See, Bankruptcy Rule 8002.

B. THE CLAIM MUST FAIL AS THE JUDGMENT WAS NOT SATISFIED WITHIN THE TIME ALLOWED TO FILE A CLAIM.

The last sentence of Bankruptcy Rule 3002(c)(3) states that a claim shall not be allowed if the judgment is not satisfied within such period. Such period refers to the time to file a claim in the prior sentence which is 30 days after a judgment becomes final. The judgment became final on April 9, 1999. The judgment was not partially nor fully satisfied within the 30 days thereafter. No portion of the judgment was satisfied until the Trustee successfully executed on a bank account garnishing funds

1	around June 1, 1999. Since the judgment debtor did nothing to									
2	satisfy the judgment within the time allowed, the claim must fail.									
3	DATED this $12$ day of June, 2000.									
4	$\Omega_{11} \cap \mathcal{U}_{22}$									
5	H. JAMES MAGNOSON									
6	Attorney for Trustee									
7	CERTIFICATE OF MAILING									
8 9	I hereby certify that a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF TRUSTEE'S OBJECTION was mailed by first class prepaid mail on the 12 day of June, 2000 to:									
10	U.S. Trustee Office Mr. Malcolm Dymkoski									
11	P.O. Box 110 Attorney at Law Boise, ID 83701 111 N. 2nd, Ste 202									
12	Coeur d'Alene, Idaho 83814									
13	John & Jacquelyn Gale HCR 01 Box 351									
14	Naples ID 83847									
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